



Three lessons I wish I knew when I first became a judge

AND OCTAVIO PAZ, AN IDEAL MENTOR

What happens when you are asked to give advice, told you can only make three points, that you must do it in three to four minutes, and that those points would be broadcast via Zoom to a captive audience? That is exactly what happened to me earlier this year when the Latino Judicial Officers Association asked me to speak at a meeting of Latino Judicial Officers. The topic was three lessons I wish I knew when I first began as a judge 28 years ago.

I was honored to be asked. And I wondered, why was I selected? Was it because of my knowledge of the law? My trial experience? Articles I have written? My 30 years of teaching? Nope. None of the above.

Rather it was my longevity on the bench. The association determined that I was the oldest (in terms of years on the bench – not necessarily in age) Latino male Superior Court judge in Los Angeles County. This criterion also applied to an

outstanding female judge who was also asked to speak, Los Angeles Superior Court Judge Anna Marie Luna.

A talk like this could not have happened at a better time, during the pandemic when courtrooms, while still busy but steadily increasing its inventory, were rarely engaged in trials or lengthy hearings.

I found this past year to be the most isolating experience in my 28 years on the bench. Judges, particularly in civil, worked with staff largely in the absence of parties and lawyers, having to rely on electronic devices for contact with the world outside the courtroom. Nevertheless, this isolation gave me an opportunity to reflect on the question presented to me.

My first thought was, while I appreciated being asked, I was not certain those people in attendance would want my advice. Nonetheless, I had agreed to do it, so in preparing my

remarks, I embraced the words of author Agatha Christie, who said, “Good advice is always certain to be ignored but that’s no reason not to give it.”

Knowing these wise words, I spoke about the three lessons I wish I knew when I first began as a judge. I’ll add a section for each as to how lawyers can also learn from these lessons.

Lesson One: Cultivate mentors

Throughout my career I have learned how important it is to cultivate mentors. Watching them, learning from them, and considering their actions in times when challenged by a difficult decision has been an integral part of my growth as a lawyer and a judge.

Starting as a lawyer, I found both attorney mentors and judicial mentors. From lawyers, I sought to learn the techniques and emulate the expertise demonstrated in court. From judges

I wanted to learn proper judicial demeanor, thoughtful decision-making, and how to encourage civility.

When I was elevated to the bench, I surrounded myself with judicial officers who knew more than I did, who were more adept at running a courtroom than I was, and who made an outstanding impression on those in the courtroom.

One of those mentors, who would have been an excellent candidate for the job of giving sage advice and would have qualified as a longer-serving Latino judge had he not sadly passed away last fall, was the late Superior Court Judge Victor Chavez. Before I was a judge, I would visit him in his courtroom. He consistently gave me great advice and supported my dream to become a judge. When I became a judge and throughout all of our years on the bench together, he would always listen to me, treat me with the highest respect, and urge me to search for a just result in every matter I handled. His courtroom was a model of civility, he showed patience in treating everything with dignity, and he always showed deep integrity as a judge. I would urge you to find mentors and develop new ones as assignments change.

Beyond the mentors to whom we can personally reach out, I have expanded my quest and also seek out mentors from history and think about the advice they could give to me. Some of those mentors I have written about include Benjamin Franklin, Mark Twain, Will Rogers, Winston Churchill, Groucho Marx, Oscar Wilde, and William Shakespeare.

A current mentor of mine is the Nobel Prize-winning Mexican poet and statesman Octavio Paz, who spent his life exploring and illuminating the human condition. When I was asked by the Los Angeles Latino Judges Association to give some advice targeted to newer judges, I realized that this was the perfect opportunity to add a Latino mentor to my group of ideal mentors.

There are many other worthy candidates for Ideal Mentors from Mexico (to name a few: Carlos Fuentes, Diego Rivera, Frida Kahlo, Cantinflas – Mexico's worthy answer to Charlie Chaplin). But

Octavio Paz is a perfect beginning because of his rich contributions to literature.

Octavio Paz is an ideal mentor for judges and lawyers because he represents a deep thinker who passionately discovered different cultures, wrote extensively in prose and poetry about his views of the world, and served as an ambassador seeking to understand and relate to others in the world, an ideal qualification for a lawyer and a judge.

Octavio Paz was born on March 31, 1914, in Mexico City. His father was a lawyer who represented Emiliano Zapata, the leader of the Mexican revolution who was ultimately defeated, causing Paz and his family a brief exile to Los Angeles. He later returned to Mexico and in university he originally studied law, like his father, but then changed his major to literature. This shouldn't have been a surprise as he published his first book of poetry when he was 17. He followed this with a vast output of books of prose and poetry. He visited Paris and was influenced by the surrealist movement by such vanguards as Andre Breton, Marcel Duchamp, Luis Bunuel, and Salvador Dali.

In addition to writing and teaching at University of Texas at Austin, Cornell, Harvard, and Cambridge, he began a new career by joining the Mexican diplomatic service. He had posts in Tokyo, Switzerland, and later, he was appointed ambassador to India. His writings reflected a deep inquiry into the human condition, different cultures, and how insight into the thinkers of the past can influence an individual's world view.

The following are some reasons Octavio Paz and his gifts of poetry and prose should be consulted in shaping trial strategy. First, the art of poetry should be studied in crafting opening statements and closing arguments. Octavio Paz had the ability to deal with complex subjects of gender, race, and emotions with a pithy quality that made his subjects relatable. The striking quality of his poetry is its ability to take larger themes and crystalize them in a concise manner. Lawyers use their words to reach a jury much like a

poet uses their words to touch people, as heard recently with Amanda Gorman's stirring words at the inauguration of President Joseph Biden.

Poetry in closing argument: Clarence Darrow

In 1924, in Chicago, Clarence Darrow gave a closing argument that used poetry to elucidate the complex themes of the case. In this murder case, two wealthy young men, Nathan Leopold and Richard Loeb, killed a young boy for the thrill of killing, and pleaded guilty. The defendants put their fates in a judge who would hear Darrow's impassioned speech against the death penalty. Clarence Darrow ended his six-hour closing argument with a quote from Omar Khayyam, a Persian poet from the 11th century, known chiefly for the *Rubaiyat* from which this is taken:

*So I be written in the Book of Love,
I do not care about that Book above.
Erase my name or write it as you will,
So I be written in the Book of Love.*

The entire argument was a plea for mercy, blended with argument by Darrow reviewing the facts, the law, morality, and the reports of experts as to what caused the two young men to take an innocent child's life. What ended this monumental argument was a simple plea for mercy, by evoking the universal plea for love, from a renowned poet. A perfect way to end a closing argument, and the words likely created a powerful impact that resulted in the sparing of the lives of these two troubled individuals. Whether or not you agree with the resulting verdict that spared the lives of Leopold and Loeb, the impact of this spare use of poetry should be considered by every trial lawyer.

Lawyers should consider the power of the unconscious

Octavio Paz used the works of surrealism to influence his writings both in prose and poems. Surrealism focuses on mining the unconscious and dreams for archetypal themes and forms. How could surrealism help a trial lawyer?

First, lawyers should strive for original thoughts and put them in their arguments. A technique developed by

surrealists is free association or automatism, where the artist would write down every thought without judgment in creating a work. So often, lawyers use the same stock phrases and arguments they have used throughout their careers with the old saw that “if it ain’t broke, don’t fix it.” The argument that using the same phrases over and over again doesn’t matter with a new jury because, for them, it is the first time they have heard it, is misguided. Stale lines don’t become fresh to a new audience. Jurors are too smart.

Lawyers should always try to tailor their arguments to the specific case. That can be achieved a number of ways, all techniques borrowed from surrealism. First, a lawyer’s view taken from their imagination should guide them as they use a free association technique of writing down all the images and themes about the case without passing judgment on the information. That includes a lawyer’s dreams, which often have vivid imagery, often focused upon the trial. During a sleepless night, use that time by writing down the images that relate to the trial. They often contain themes that can recognize the most challenging issues in the trial. Work with these ideas and write down the thoughts in those moments of insomnia to incorporate in the trial later that day.

A second technique from surrealism is to find the juxtaposition or relationship between unrelated objects, themes, and concepts. One of the common goals in a trial is to rationalize and make logical one side’s view of a trial to convince a jury. Frequently lawyers will have to explain the facts revealed in trial and relate them to the law of the case. A lawyer, to be successful, will often have to explain how seemingly contradictory behavior of a party can be rationalized.

Judges and lawyers should be a model of diplomacy

Beyond introspection, Octavio Paz used his talents as a poet, professor, and author by devoting a great portion of his life to diplomacy, working up the ranks of foreign service, culminating in being appointed ambassador to India.

A diplomat is like being a lawyer or a judge. In all positions, listening is key. The legal profession should study every successful diplomat in their ability to understand all points of view. Perhaps the most important aspect of a diplomat, a quality Octavio Paz was known for, was civility. Civility in litigation has become a topic in legal education to the extent that the phrase “I will strive to conduct myself with dignity, courtesy, and integrity” has been recently added as part of the oath to new lawyers. (California Rules of Courts, Rule 9.4.) Lawyers and judges should consider themselves diplomats in the law like Octavio Paz did for the world through his actions.

Judges and lawyers need to do the right thing

In the role of advocacy of a lawyer and in the role of a bench officer, ethical issues are always presenting themselves. We generally know what to do, but there is always the chance that new challenges will force a lawyer or a judge to take an action based on attorney or judicial ethics that may have an impact on that individual’s career. For judges, it can be a ruling that might be deemed controversial. For lawyers, an infinite number of issues can occur in filing a case, in discovery, and trial that can cause ethical issues that may compel a lawyer to right a perceived wrong.

In 1968, Octavio Paz had the vaulted position as the ambassador from Mexico to India. Back in Mexico City, in 1968, 10 days before the opening of the Summer Olympics in Mexico City, police officers and military troops shot into a crowd of unarmed students in Tlatelolco Plaza. The death toll from this attack is still debated, but this tragedy left an indelible mark on Octavio Paz, who resigned from his position as ambassador of India, and devoted the rest of his career to writing and teaching. Paz’s act of courage to leave this position of power and prestige to protest these acts he believed were wrong against the Mexican students stands out as a model of bravery in doing the right thing regardless of the consequences. Judges and lawyers should remember Octavio Paz’s courage in willingly

jeopardizing his career by doing what he believed was right.

Judges and lawyers should be aware of implicit bias at all times

In 1950, Octavio Paz wrote a series of essays in a book titled *The Labyrinth of Solitude* which sensitively focused on the Mexican identity through history, social influences, and the impact of the individual in relation to the Mexican’s place in the world. In depth, Paz focuses on the culture with such keen insight that this work is amongst his most acclaimed masterpieces. Judges and lawyers could learn from Paz in examining the many cultural issues focusing on the individual and his past when he states, “To become aware of our history is to become aware of our singularity.” This mandate to focus on the individual should encourage judges and lawyers to respect as individuals the litigants, lawyers, and jurors we interact with daily in court. In fact, the concern is so great that culture and other factors can influence decision-making, implicit bias training is now required for judges and lawyers. (Business and Professions Code Section 6070.5(2019) and Government Code Section 68088 (2019).) *The Labyrinth of Solitude* and many other books by Octavio Paz about other cultures should be consulted to understand and develop a sensitivity towards the perils of unconscious bias decision-making.

Judges and lawyers should view jurors as individuals

In prose that reads like poetry, CACI 113 (2012) is a bias instruction that focuses on the fact that we all have biases but instructs jurors to examine any bias they have and not use it in their decision making. In jury selection, peremptory challenges of jurors without a stated reason have been considered a useful tool to select – or deselect jurors – to find an ideal jury. As long as these challenges were not used to discriminate on the basis of the prospective juror’s race, ethnicity, gender, gender identity, sexual orientation, national origin, religious affiliation or perceived membership in any of those, peremptory challenges were generally allowed without objection.

There was a concern that such challenges were being used in a discriminatory manner and that standard non-discriminatory reasons were given to disguise a discriminatory motive. A change in the law of Code of Civil Procedure 231.7, applicable to criminal cases in 2022 and in civil cases in 2026, mandates the court to scrutinize suspect reasons to eliminate jurors, providing the court a number of factors to consider in the case, and imposes a clear and convincing burden for certain enumerated reasons used to excuse a juror.

How do these changes in the law relate to Octavio Paz? His masterful poem *Sunstone* (1957) in 584 lines, speaks to the importance of the individual, which could become lost when selecting jurors. After all, jurors are the only people in the courtroom who haven't asked to be there but are fulfilling their civic duty to give both sides a fair hearing. Every line in the poem by Paz, such as below, speaks to the importance of the individual:

I walk through the days, the
trampled moments,

I walk through all the thoughts of my
shadow,

I walk through my shadow in search
of a moment.

This new code section, along with the training required in implicit bias, affirms the fact that each judge and lawyer should look at jurors as individuals and to not fall into the trap of assuming they can be easily categorized and dismissed. Octavio Paz spent his life affirming the celebration of the individual, and the legal community should also embrace this sentiment.

Octavio Paz is a Nobel Prize winner whose work stands ready for any trial lawyer to learn from. Whether his prose or poetry, Paz asks us to explore our own feelings, to study other cultures and to enrich our words with poetic words that will convince and move jurors.

Lesson Two: Don't expect to make everyone happy – you can't

When I was a new judge, I truly believed that, if I put on a black robe,

explained my rulings thoroughly, listened to both sides and then, after thoughtful consideration, delivered a reasoned opinion, that even the losing side would consider me a thoughtful judge, a good judge, or at least not that bad a judge. When I was a lawyer, I thought that would be an achievable goal. I was wrong.

I am always astounded that, when I am greeted by lawyers who handled a case in my court more than a decade ago, the only thing they remember were my adverse rulings. What about the lawyers for whom I ruled in their favor? Even with them, the result is mixed. Some think I am a good judge and did the right thing. Others think the favorable ruling was an aberrant fluke. The lesson I have learned is that judges must develop and perpetually maintain a thick skin. And trying to make everyone happy is a completely unrealistic goal and should be replaced with the goal of trying to make the best ruling possible, having a reason that you can articulate for that opinion, and continuing to strive to do your best.

I have two quotes that are on the bench that help me in situations where people are clearly showing their animosity based on a ruling I made. The first is, "you are not the target." This quote is the title of motivational speaker Laura Huxley's book, which explains that negative energy can appear to be meant for a targeted person, like a judge or a lawyer. Rather than becoming a victim of the temporary attack, it can be helpful to remember that this hostility reveals more about the speaker and you are simply placed in this stressful situation. Also, that negative energy is not really meant for the recipient but simply a reality to living in a world of many personalities. Taking a professional distance from this negativity will assist a judge or lawyers from becoming embroiled in a situation that may be unavoidable but is always temporary.

The second quote is, "what you think of me is none of my business" which is also from a book title by another motivational speaker, Terry Cole-Whittaker. The quote is a soothing

reflection when faced with a tense courtroom exchange because it illustrates how we can only control our own thoughts, we cannot control others, and we should focus on doing our best job possible.

Whether a lawyer or a judge, we can learn in litigation to focus on our behavior and less on the negative forces or imagined opinions that others might have in our adversarial system. We cannot please everyone, but we can always do our best as an ultimate goal.

Lesson Three: Reach out to others

As a judge, I often think of reaching out to attorneys after trial to provide feedback. As this is not possible for ethical reasons, I instead write down all of the things that I would have told counsel and use this information to teach others.

For example, over the past 30 years, I have taught trial practice and other courses at Pepperdine Caruso School of Law. Most of my teaching materials incorporate notes that I've taken during and after a trial.

I further use information taken from trials for articles I've written for legal publications, including an Action Guide for the Continuing Education of the Bar on *Laying a Foundation to Introduce Evidence (Preparing and Using Evidence at Trial)* (2018). I have also done outreach to schools and participated in legal programs which include moot court programs. These programs bring together judges, lawyers, law students, high school, and middle school students with a goal to explain our system of justice and encourage the careers of future lawyers and judges.

Judges and lawyers are great resources for the vast amount of information they learn in court that could easily be lost if simply kept to themselves. Judges and lawyers should mentor, teach, write and volunteer to do whatever they can to give back all the valuable lessons they have learned.

One extra lesson

My final word of advice – and also my request – is to do everything you can to

maintain and, when necessary, restore civility. Our legal system of justice works best when everyone who participates in it treats it with the utmost respect. We can all become mentors to others and share what makes our system provide justice to all.

Judge Gregory W. Alarcon has been a judge for over 28 years. Before that, he was a deputy attorney general for the State of California, a deputy district attorney for Los Angeles County, and an assistant United States Attorney for the Central District of California. Judge Alarcon received a J.D. from Loyola Law School in 1981 and a B.A. from UCLA. For the past 28 years, he has been an adjunct professor at Pepperdine University School of Law teaching trial practice and related

subjects. He is also active in training and educating new judges and teaching ethics to all judges throughout the state. He is a frequent lecturer on various topics on trial issues including subjects such as "Lessons from Landmark Trials," "Judicial Personalities," "Creative Solutions for Keeping and Motivating Jurors," "Coping With Judicial and Lawyer Stress," "Civility in Court," "Hamlet for Lawyers," "Ideal Mentors for the Courtroom," and many others. He has written numerous articles on legal issues for lawyers and judges. In 2013, Judge Alarcon was given the 2013 Constitutional Right's Foundation "Judge of the Year" award and a Judicial Excellence award from the Mexican American Bar Association. ☐

